

REMARKS

The Decision by Board of Patent Appeals and Interferences dated February 7, 2011 ("Decision"), has been received and carefully considered. In this response, claims 1, 5, 6, and 17-19 have been amended and claims 3, 4, and 16 have been cancelled without prejudice. No new matter has been added. Entry of the amendments to claims 1, 5, 6, and 17-19 and the cancellation of claims 3, 4, and 16 without prejudice is respectfully requested. Reconsideration of the pending rejections in the present application is also respectfully requested based on the following remarks.<sup>1</sup>

I. THE OBVIOUSNESS REJECTION OF CLAIMS 1-11 AND 14-19

Claims 1-11 and 14-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,625,118 to Hadi Salim et al. ("Hadi Salim") in view of U.S. Patent No. 7,035,220 to Simcoe ("Simcoe"). This rejection is hereby traversed.

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<sup>1</sup> As Applicant's remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicant's silence as to assertions made by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., assertions regarding dependent claims, whether a reference constitutes prior art, whether references are legally combinable for obviousness purposes) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such in the future.

Under 35 U.S.C. § 103, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. In re Fine, 837 F.2d 1071, 1074 (Fed. Cir. 1988). There are four separate factual inquiries to consider in making an obviousness determination: (1) the scope and content of the prior art; (2) the level of ordinary skill in the field of the invention; (3) the differences between the claimed invention and the prior art; and (4) the existence of any objective evidence, or "secondary considerations," of non-obviousness. Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966); see also KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007). An "expansive and flexible approach" should be applied when determining obviousness based on a combination of prior art references. KSR, 127 S. Ct. at 1739. However, a claimed invention combining multiple known elements is not rendered obvious simply because each element was known independently in the prior art. Id. at 1741. Rather, there must still be some "reason that would have prompted" a person of ordinary skill in the art to combine the elements in the specific way that he or she did. Id.; In re Icon Health & Fitness, Inc., 496 F.3d 1374, 1380 (Fed. Cir. 2007). Also, modification of a prior art reference may be obvious only if there exists a reason that would have prompted a person of ordinary skill to make the change. KSR, 127 S. Ct. at 1740-41.

Regarding claim 1, the Decision affirms the rejection that the claimed invention would have been obvious in view of Hadi Salim and Simcoe. Applicant respectfully disagrees. However, in order to forward the present application toward allowance, Applicant has amended claim 1 to more specifically define the claimed invention, and specifically those features that further differentiate the claimed invention from Hadi Salim and Simcoe, as well as the other cited references. In particular, Applicant respectfully submits that Hadi Salim and Simcoe, either alone or in combination, fail to disclose, or even suggest, "initiating a flow of packets across the network via at least one signaling packet originated from an end terminal located outside the network, as presently claimed. In contrast, Hadi Salim discloses that the TCP receiver will send an acknowledge message (ACK) with the explicit congestion notification (ECN) notify bit set. This is sent back to the TCP source, which reacts by reducing the window size to control the flow. See, e.g., Hadi Salim, column 6, lines 11-14. Also, Hadi Salim discloses that if no ACK is received for any reason, e.g., router A has discarded the packet, after a time-out, the TCP source retransmits the packet. See, e.g., Hadi Salim, column 6, lines 17-20. Thus, Hadi Salim, at most, discloses a TCP receiver within a network that sends back an acknowledge message (ACK) to

a TCP source, and fails to disclose, or even suggest, "initiating a flow of packets across the network via at least one signaling packet originated from an end terminal located outside the network, as presently claimed.

Also, Simcoe fails to remedy the deficiencies of Hadi Salim. Rather, Simcoe discloses that a source initiates a data flow to a destination by sending the paced out data as packet pairs, i.e., two packets, back-to-back. Thus, Simcoe, at most, discloses a data flow from a source to a destination and fails to disclose, or even suggest, "initiating a flow of packets across the network via at least one signaling packet originated from an end terminal located outside the network, as presently claimed. Accordingly, Applicant respectfully submits that claim 1 should be allowable over Hadi Salim and Simcoe.

Regarding claims 2-17, these claims are dependent upon independent claim 1. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071 (Fed. Cir. 1988). Thus, since independent claim 1 should be allowable as discussed above, claims 2-17 should also be allowable at least by virtue of their dependency on independent claim 1. Moreover, these claims recite additional features which are not disclosed, or

even suggested, by the cited references taken either alone or in combination.

Regarding claims 18 and 19, while different in overall scope from claim 1, these claims recite subject matter related to claim 1. Thus, the arguments set forth above with respect to claim 1 are equally applicable to claims 18 and 19. Accordingly, Applicant respectfully submits that claims 18 and 19 should be allowable over Hadi Salim and Simcoe for analogous reasons as set forth above with respect to claim 1.

In view of the foregoing, Applicant respectfully requests that the aforementioned obviousness rejection of claims 1-19 be withdrawn.

CONCLUSION

In view of the foregoing, Applicant respectfully submits that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 14-1315, and please credit any excess fees to the same deposit account.

Respectfully submitted,  
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Date: April 5, 2011